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10/645,080	08/21/2003	Erik John Hasenoehrl	9344	6935

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
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EXAMINER

AHMED, HASAN SYED

ART UNIT	PAPER NUMBER
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1618

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

- Receipt is acknowledged of applicants' amendment and remarks, both filed on 6 May 2008.
- The 35 USC 102 rejection is withdrawn in view of the amendment. As such, applicants' arguments regarding the 35 USC 102 rejection are moot.

* * * * *

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 16-19, 21-24, 27-30, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.* in view of Bries, *et. al.* (U.S. Patent No. 5,110,843) further in view of Bergquist, *et. al.* (U.S. 2003/0064042 A1).

Slavtcheff, *et. al.* teach a layered effervescent article for cleansing body surfaces (see col. 2, lines 10-30) comprising:

- the effervescent composition of instant claims 1, 24, and 30 (see col. 2, line 16);
- the liquid-permeable first layer comprising a web (as defined in paragraph 0016 of the instant specification) layer of instant claims 1, 24, and 30 (see col. 2, line 67 – col. 3 line 9; col. 3, lines 32 and 46-56; figure 2);

- the cleansing composition (surfactant) of instant claims 1, 24, and 30 (see col. 2, line 24);
- the pouch comprising a second layer comprising at least two webs associated with an effervescent composition of instant claim 2, 25, and 31 (see col. 3, lines 54-56; figure 2);
- the pouch made of the non-woven material of instant claim 3 (see col. 3, line 6);
- the laminate comprising a second layer comprising at least two webs and effervescent composition associated with the webs of instant claim 4 (see col. 2, line 67 – col. 3 line 9; col. 3, lines 32 and 46-56; figure 2).
- the laminate made of the non-woven material of instant claim 5 (see col. 3, line 6);
- the layers bonded together about the perimeter of the article of instant claim 6 (see col. 3, lines 48-49);
- the at least about 1.5% of effervescent composition of instant claim 7 (see col. 4, line 62);
- the effervescent composition comprising the alkaline and acidic materials of instant claim 8 (see col. 4, lines 14-16);
- the alkaline material, *inter alia*, the azides of instant claim 9 (see col. 4, lines 20-25);
- the alkaline material, *inter alia*, the sodium bicarbonate of instant claim 10 (see col. 4, lines 20-25);

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- the acidic material, *inter alia*, the toluene sulfonic acid of instant claim 11 (see col. 4, lines 20-25);
- the acidic material, *inter alia*, the succinic acid of instant claim 12 (see col. 4, lines 20-25);
- the about 1 weight percent to about 80 weight percent of the total weight of the effervescent composition of alkaline material of instant claim 13 (see col. 4, lines 24-26);
- the about 0.5 weight percent to about 80 weight percent of the total weight of the effervescent composition of alkaline material of instant claim 14 (see col. 4, lines 50-53);
- the cleansing composition on at least one surface of the first layer of instant claim 15 (see col. 2, line 24);
- the about 0.01 to about 1500, by weight of first layer cleansing composition of instant claim 16 (see col. 2, line 24);
- the cleansing composition consisting of, *inter alia*, the anionic lathering surfactants of instant claim 17 (see col. 5, line 3);
- the anionic lathering surfactants consisting of, *inter alia*, the taurate phosphates of instant claim 18 (see col. 5, line 2);
- the hard water tolerant surfactants consisting of, *inter alia*, the nonionic lathering surfactants of instant claim 19 (see col. 5, line 4);

The Slavtcheff, *et. al.* reference is silent with respect to the “Steady Flash Lather Volume” of instant claim 1, the “Steady Total Lather Volume” of instant claim 24, and

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the “Rinsability Percent” of instant claim 30. Applicant’s article is the same as the prior art. It contains the same components in the same configuration. Properties are the same when the structure and composition are the same. Thus, burden shifts to applicant to show unexpected results, by declaration or otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed properties would have been present once the composition was employed in its intended use. *In re Best*, 195 USPQ 433.

The Slavtcheff, *et. al.* reference differs from the instant application in that it teaches neither the third layer of instant claims 1, 24, and 30, nor the fourth layer of instant claims 22, 28, and 34.

Bries, *et. al.* teach a cleaning article comprising multiple layers (see col. 5, lines 23-40).

The disclosed article may contain a layer comprising a cleaner or detergent, as recited in instant claims 21, 23, 27, 29, 33, and 35 (see col. 5, lines 49-52).

Bries, *et. al.* explain that multiple layers are beneficial for “...support, reinforcement, strength, abrasiveness, etc.” See col. 5, lines 49-52.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a third and fourth layer to the second layer of the claimed article. One of ordinary skill in the art at the time the invention was made would have been motivated to add the third layer to the cleansing article for, e.g., support, reinforcement, strength, and abrasiveness, as explained by Bries, *et. al.*

The Slavtcheff, *et. al.* reference differs from the instant application in that it does not teach the high loft material of instant claims 22, 23, 28, 29, 34, and 35.

Bergquist, *et. al.* teach use of a high loft material in a personal cleansing article (see paragraph 0014).

Bergquist, *et. al.* explain that use of a high loft material in a personal cleansing article imparts the benefits of increased aeration and improved latherability (see paragraph 0015).

The Bergquist, *et. al.* reference is silent with respect to the density of the high loft material recited in instant claims 22, 28, and 34. Applicant's article is the same as the prior art. It contains the same components in the same configuration. Properties are the same when the structure and composition are the same. Thus, burden shifts to applicant to show unexpected results, by declaration or otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed properties would have been present once the composition was employed in its intended use. *In re Best*, 195 USPQ 433.

The Bergquist, *et. al.* reference does not teach the thickness of high loft material recited in instant claims 22, 28, and 34; however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine suitable thickness through routine or manipulative experimentation to obtain the best possible results, as these are variable parameters attainable within the art.

Moreover, generally, differences in thickness will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such thickness is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456; 105 USPQ 233, 235 (CCPA 1955).

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Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant thickness.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a high loft material to the claimed article. One of ordinary skill in the art at the time the invention was made would have been motivated to add the third high loft material for the benefits of increased aeration and improved latherability, as explained by Bergquist, *et. al.*

* * * * *

Response to Arguments

Applicants arguments filed on 6 May 2008 have been fully considered but they are not persuasive.

Applicants argue that, “[t]he Office Action has not explained why one of ordinary skill in the art would be motivated by Bries or Bergquist to separate the surfactant and effervescent compositions of Slavtcheff.” See remarks, page 13.

Examiner respectfully submits that applicants are not explicitly claiming separate locations for the cleansing composition and the effervescent composition.

Instant claim 1 recites the open language “comprises.” While the claim directs certain compositions to be located on certain layers, the open construction of the claim precludes neither the effervescent composition, nor the cleansing composition from any of the layers.

The secondary reference Bries is invoked merely to show that cleaning articles comprising multiple layers were known in the art at the time the instant application was filed. Bries is not used to show separation of surfactant and effervescent compositions.

Furthermore, the secondary reference Bergquist is invoked merely to show that use of high loft materials in personal cleansing articles was known in the art at the time the instant application was filed. Bergquist is not used to show separation of surfactant and effervescent compositions.

* * * * *

Conclusion

Applicants' amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASAN S. AHMED whose telephone number is (571)272-4792. The examiner can normally be reached on 9am - 5:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. S. A./

Examiner, Art Unit 1618

/Humera N. Sheikh/

Primary Examiner, Art Unit 1618